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O.S.A.(CAD)No. 162 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2024

CORAM

THE HON'BLE MR. JUSTICE M. SUNDAR

AND

THE HON'BLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI

O.S.A. (CAD) No. 162 of 2021

KITPLY INDUSTRIES LIMITED,
having its registered office at
MakumPathar, A.T.Road,
Margherita, Tinsukia,
Assam – 786 181, and its
corporate office at
'White House', 119, Park Street,
'A' Block, 4th Floor, Kolkata – 700 016
and a brach office at
New No. 225, Old No.150, Sydenhams Road,
Chennai – 600 003
represented through its
Commercial Manager and authorised signatory
Mr.M. Kannan

..Appellant

Vs.

1. M/s. Mangalam Enterprises,
No.49, NarasingPerumal Koil Street,
Choolai, Chennai – 600 112.



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2. M/s. Ply Co.,
Old No.183/2, New No. 305,
Sydenhams Road,
Apparao Garden, Choolai,
Chennai – 600 112.
3. Mr.V. Veeramuthu
4. Mr. Rajendra Kumar Nahata
5. M/s. Kitply Wood Industries,
Solitare Tower, Door No: 8 & 9,
1st Floor, Shop No. F15,
Sami Pillai Street,
Choolai, Chennai – 600 112.
6. M/s. Ulteno,
86, M.C. Road, Washermenpet,
Chennai – 600 021.

(R5 & R6 given up)

..Respondents

Prayer: Original Side Appeal under Section 13 of Commercial Courts Act read with Order XXXVI Rule 1 of the O.S. Rules read with Clause 15 of the Letters Patent as against the judgment and decree dated 22.07.2021 passed in A.No. 4280 of 2019 in C.S. No. 233 of 2018.

For Appellant :: Mr.P. Arul Gnana Prakash

For Respondents :: Mr.A.K. Samy for
Ms.M. Vijayalakshmi Rajagopal
for R1 & R3



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Mr.N. Surya Senthil along with
Ms. Y.K. Aiswarya of
M/s. Surana & Surana for R2 & R4

R5 & R6 given up

J U D G M E N T

(Delivered by M. SUNDAR,J.)

This consent judgment/compromise decree will now dispose of captioned intra court appeal i.e, 'Original Side Appeal' ('O.S.A.' for the sake of brevity).

2. In the previous listing of the captioned matter on 03.06.2024, we made the following proceedings/order:

'Mr.P. Arul Gnana Prakash, learned counsel of M/s. BFS Legal for the appellant and Mr. N. Surya Senthil, learned counsel of M/s.Surana & Surana for respondents 2 and 4 are before us.

2. *Learned counsel for appellant submits that parties have arrived at a settlement and requests for time to file a Joint Memo of Compromise.*

3. *To be noted, in today's hearing, there is no representation for respondents 1, 3, 5 and 6. Learned counsel for appellant submits that the 6th respondent is being given up. He has*



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also made an endorsement to that effect in the case file.

4. *List under the cause list caption 'For Recording Memo of Compromise' on 11.06.2024.*

The aforementioned proceedings/order made in captioned O.S.A. on 03.06.2024 shall be read as an integral part and parcel of this consent judgment/compromise decree.

3. Today, Mr. P. Arul Gnana Prakash, learned counsel of M/s. BFS Legal (Law Firm) for sole appellant, Mr.A.K. Samy, learned counsel representing Ms. Vijayalakshmi Rajagopal, learned counsel on record for respondents 1 and 3 and Mr.N.Surya Senthil along with Ms. Y.K. Aiswarya, learned counsel of M/s. Surana & Surana (Law Firm) for respondents 2 and 4 are before us. To be noted, after the earlier proceedings dated 03.06.2024, 6th respondent has been given up/deleted. Today, learned counsel for appellant has made an endorsement in the case file that 5th respondent is given up and a scanned reproduction of the same is as follows:



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The aforementioned endorsement is reiterated in the hearing. Owing to this, 5th respondent also stands deleted.

4. Before we proceed further, we deem it appropriate to record that respondents 1 and 2 are not juristic persons. Respondents 3 and 4 are carrying on business in the name and style of respondents 1 and 2



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respectively as respective sole proprietors. Captioned matter is listed under the cause list caption 'FOR RECORDING OF MEMO OF COMPROMISE'.

5. The aforementioned learned counsel submitted in unison/in one voice that a Memorandum of Compromise styled 'Terms of Settlement' ('said ToS' for the sake of convenience and clarity) dated 11.06.2024 has been executed as between appellant, 1st respondent and 3rd respondent. As regards respondents 2 and 4, Mr.N. Surya Senthil, learned counsel of M/s. Surana & Surana and Mr.P. Arul Gnana Prakash, learned counsel of M/s. BFS Legal submit that respondents 2 and 4 would be executing an affidavit of undertaking and that would suffice. This submission is recorded. To be noted, respondents 2 and 4 have also joined in the common request to record the aforementioned ToS and request for a compromise decree in terms of the said ToS.

6. Though the said ToS was presented before this Court, we find that clause (III) thereat refer to the mark of the appellant/plaintiff as a well-known trademark within the meaning of Section 2(1)(zg) of 'The



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Trademarks Act, 1999 (Act 47 of 1999)' (hereinafter 'said TM Act' for the sake of brevity). When this was pointed out, learned counsel and parties to the ToS, who were present in Court agreed to have clause (III) deleted and suitable scoring off has been made in the said ToS and these endorsements have been duly countersigned by the parties, who were present in Court. As regards appellant, an authorised signatory backed by Board Resolution, is present in Court and as regards respondents 1 and 3, Mr.V.Veeramuthu, S/o. Velayudam is present in Court. Both parties duly confirmed that they have signed the said ToS on their own volition after understanding the terms thereat, agreed for deletion of clause (III) and also assured that both sides would honour all the terms adumbrated in the said ToS with due sanctity. This submission is recorded.

7. The photo identity cards of the aforementioned litigants present in Court are produced and a scanned reproduction of the same are as follows:

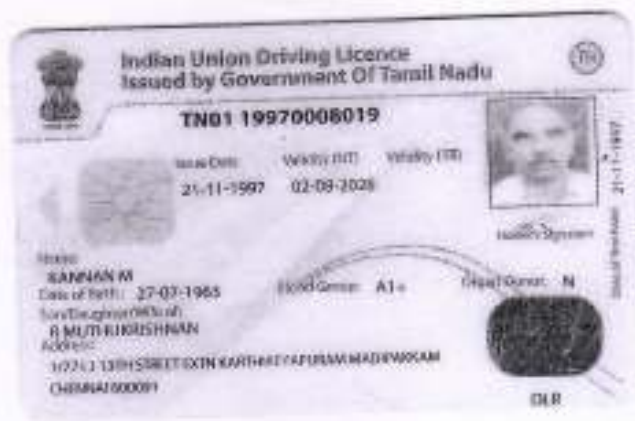
***Driving Licence of Mr.M. Kannan, Authorised Signatory of
Appellant:***



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Aadhar Card of V. Veeramuthu, Proprietor of 1st

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8. In the aforementioned scenario, all the aforementioned counsel and the litigants present in Court reiterated the request in one voice for a consent judgment/compromise decree in terms of said ToS.

9. This Court having interacted with the litigants and having been satisfied about the said ToS and the compromise thereat, accedes to the request and deems it appropriate to dispose of captioned intra court appeal i.e, captioned O.S.A. by saying that the same now stands disposed of in terms of the said ToS, which read as follows:



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**JOINT MEMO OF COMPROMISE SUBMITTED BY THE APPELLANT
AND FIRST & THIRD RESPONDENTS**

The Appellant and Respondent Nos. 1 & 3 above named humbly submit as follows:

1. The Appellant has preferred the abovementioned OSA (CAD) No. 162 OF 2021 against the summary judgement dated 22.07.2021, passed in A.No.4280 of 2019, partly allowing C.S.No.233 OF 2018 in so far as the Permanent Injunction relief is concerned while rejecting other reliefs sought by the Appellant in the said suit.
2. It is respectfully submitted that the Appellant and Respondents Nos. 1 & 3, during the pendency of the above Appeal, after mutual discussions and negotiations have arrived at an amicable and full and final settlement of all the Inter se disputes pending between them. Accordingly, the Claimant and the Respondent Nos. 1 & 3 have entered into a Settlement Agreement dated 26.03.2024 (**"Settlement Agreement"**), recording the terms of the settlement arrived between themselves. *A copy of the Settlement Agreement dated 26.03.2024 entered between the Appellant and Respondent Nos 1& 3 before the Mediation Centre, Madras High Court in the presence of the Mediator, is enclosed herewith as Annexure-A and may be treated as part and parcel of this Memo submitted by the Parties.*
3. The Appellant and the Respondent Nos. 1 & 3 crave leave of this Hon'ble Court to treat the Settlement Agreement dated 26.03.2024 entered between the parties as part and parcel of this Memo and further pray that this Hon'ble Court may be pleased to pass a Judgment and Decree inter se between the Appellant and the Respondents 1 & 3 as per the terms of the said Settlement



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Agreement entered between the Appellant and Respondent Nos. 1 & 3.

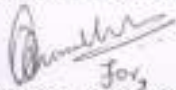
It is therefore humbly prayed that this Hon'ble Court may be pleased to take this Memo of Compromise and the Settlement Agreement dated 26.03.2024 entered between the Appellant and Respondents 1 & 3 before the Mediation Centre, Madras High Court in the presence of the Mediator on record and pass a Judgement and Decree in OSA (CAD) No. 162 of 2021 inter se between the Appellant and Respondent Nos. 1 & 3 in terms of the said Settlement Agreement dated 26.03.2021 and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thereby render justice.

Dated at Chennai on this the 11th day of June 2024


APPELLANT


RESPONDENT NOS 1 & 3


COUNSEL FOR APPELLANT


**COUNSEL FOR RESPONDENT
NOS 1 & 3**



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சாட்சிகளாக 6 தமிழ்நாடு TAMILNADU Veeramuthu
26.03.2024

CY 622758
I. SARASWATHI
S.V.L. No 38 / B3 / 97
14, Mandapam Street, 1st Lane,
KILPAIK GARDEN,
CHENNAI-10. Call: 94420 98011

TERMS OF SETTLEMENT

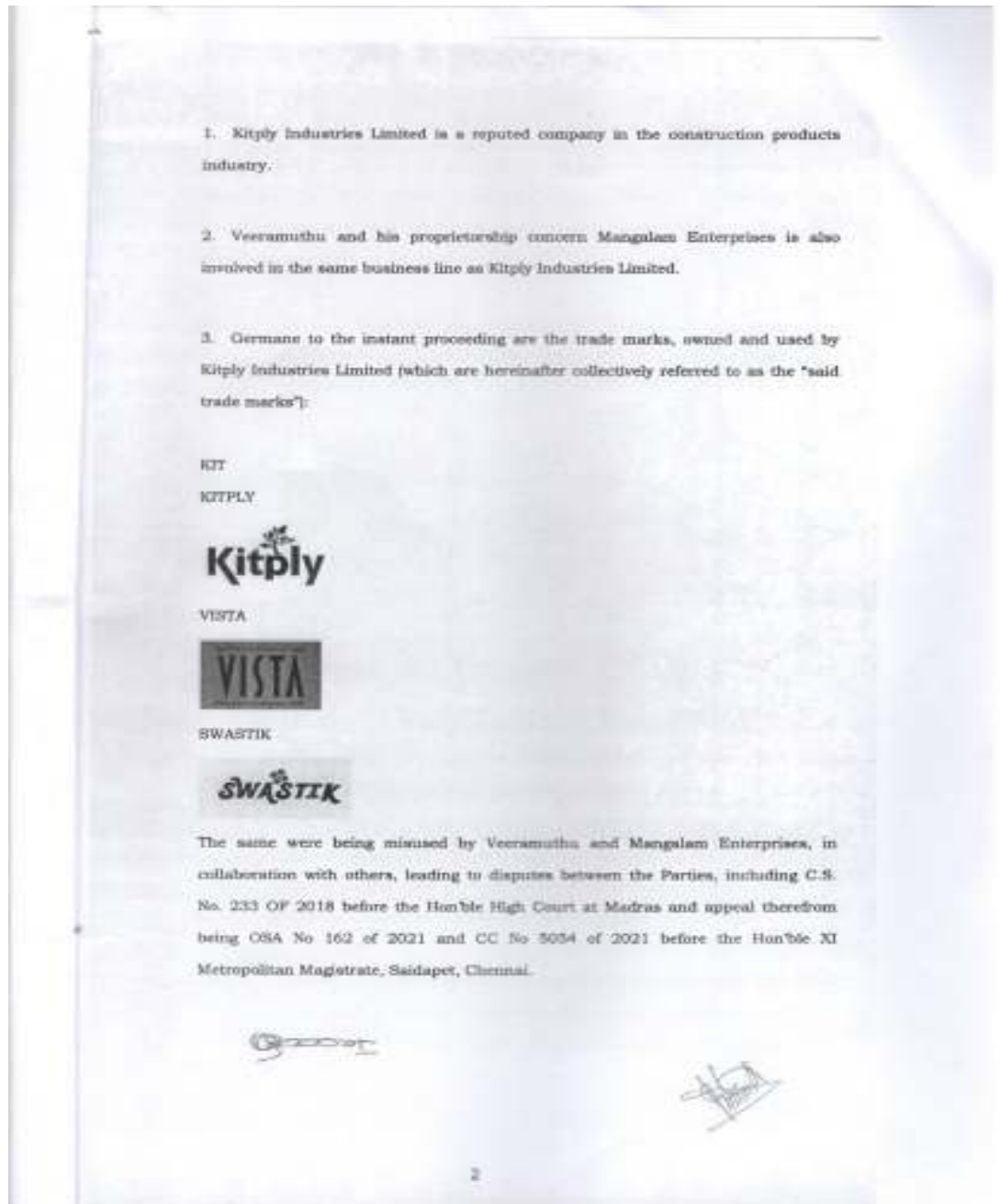
[A] Kitply Industries Limited, the Appellant/Plaintiff in OSA 162 of 2021 before the Hon'ble High Court at Madras and the 2nd Respondent in Crl.O.P.No. 15016 of 2022, before the Hon'ble XI Metropolitan Magistrate, Saidapet, Chennai and [B] Veeramuthu, Proprietor of Mangalam Enterprises, the 1st and 3rd Respondents/Defendants in OSA 162 of 2021, Hon'ble High Court at Madras, and the Petitioner in Crl.O.P.No. 15016 of 2022, Hon'ble XI Metropolitan Magistrate, Saidapet, Chennai have arrived at a settlement in *inter alia* the subject matters. The brief facts of the matter and terms and conditions of the settlement are given hereunder.



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4. Kitply Industries Limited, one part and Veeramuthu for himself and on behalf of Mangalam Enterprises on the other part have thereafter undertaken negotiations and have decided to amicably settle the disputes inter se, on the terms and conditions stated hereunder, on their own respective accord without any coercion from any quarters:

- I. Veeramuthu and Mangalam Enterprises hereby admit, agree and confirm Kitply Industries Limited as the rightful owner and lawful proprietor of

the said trade marks KIT, KITPLY,

Kitply

, VISTA,

VISTA

, SWASTIK,

SWASTIK

, including any and all label variations under all appropriate law, including statutory law, including the Trade Marks Act, 1999, Copyright Act, 1957 and common law.

- II. Veeramuthu and Mangalam Enterprises irrevocably agree and acknowledge that Kitply Industries Limited's said trade marks, belong to and vest solely, absolutely, unconditionally and permanently with Kitply Industries Limited in perpetuity without any limitation of time and that Kitply Industries Limited shall have the exclusive right to initiate action, claim or proceedings and/or obtain relief/s in respect of any infringement or unauthorized use of the said trade marks against Veeramuthu and Mangalam Enterprises or third parties.

- ~~III. Veeramuthu and Mangalam Enterprises hereby acknowledge that Kitply Industries Limited's said trade marks are well-known, highly reputed and distinctive trade marks under the provisions of the Trade Marks Act,~~

[Signature]

[Signature]

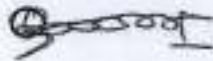
[Signature]



1999 and Rules made thereunder, including Section 2 (1) (zg) of the Trade Marks Act, 1999. Veeramuthu and Mangalam Enterprises hereby further admit, agree and confirm that Kitply Industries Limited have the legal, vested and statutory right to the exclusive use and registration of Kitply Industries Limited's said trade marks and the same are exclusively identified and associated with Kitply Industries Limited.

III. Veeramuthu and Mangalam Enterprises agree that this terms of settlement shall be binding on their owners, employees, servants, agents, principal officers, partners, affiliates, franchises, stockiest, assigns, heirs, successors, Directors, proprietor, persons having interest in the Veeramuthu and Mangalam Enterprises's business, principals, subsidiaries, sister concerns, affiliates or any other person claiming under or through them or acting in concert with it or otherwise, jointly or severally.

IV. Veeramuthu and Mangalam Enterprises agree and undertake, that whether by itself or through their owners, employees, servants, agents, principal officers, partners, affiliates, franchises, stockiest, assigns, heirs, successors, Directors, proprietor persons having interest in Veeramuthu and Mangalam Enterprises' business, principals, subsidiaries, sister concerns, affiliates or any other person claiming under or through them or acting in concert with it or otherwise, jointly or severally, shall not and/or shall not cause to:





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a) Use the impugned marks

Kitply



b) Use any mark/ name which is similar to the said trade marks of Kitply Industry Limited, in any manner whatsoever, for any goods or services, and/ or

[Signature]

[Signature]



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- c) Use any mark/ name/ artwork/ packaging/ stamping/ labels which is identical and/or deceptively similar to or comprising of the said trade marks, or any part thereof, in any manner whatsoever, for any goods or services, and/ or;
- d) Use any artwork/ non-verbal element / label/ writing style/ logo/ manner of depiction, which is identical and/or deceptively similar to Kitply Industry Limited's said trade marks, or any part thereof, in any manner whatsoever, for any goods or services, and/ or;
- e) Use any mark/ name/ Intellectual Property similar to the other Intellectual Properties of Kitply Industry Limited, for any goods or services, and/ or;
- f) Engage in manufacturing, selling, offering to sell, advertising, marketing, trading, exporting, printing, dealing, either directly or indirectly, any products bearing the marks said trademarks and/ or the impugned marks and / or use the marks KIT, KITPLY, VISTA, SWASTIK and/ or the impugned marks and/ or any other marks / names identical and/or deceptively similar to Kitply Industry Limited's said trade marks, or any part thereof, in any manner whatsoever.
- g) Never challenge the rights of Kitply Industries Limited in and to the said trade marks;
- h) Use any manner any mark/name identical and/or deceptively similar therein, directly or indirectly, for any goods or services, and/ or;

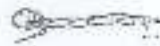


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ii) Assert any proprietary rights, common law right, copyright, over the impugned marks or over any mark/name identical and/or deceptively similar to Kiply Industries Limited's said trade marks, under any Law, directly or indirectly, for any goods or services.

✓ **VE.** Veeramuthu and Mangalam Enterprises undertake and confirm that they will withdraw unconditionally the following trade mark applications:

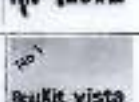
Application No.	Trade Mark
3655450	
3704259	
3649459	
3717427	
3733025	
3756302	
3768328	







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3766325	
3800219	
3800250	
3864322	
4666975	
5077781	
5086645	
5635612	

Such withdrawal requests shall be filed at the Trade Marks Registry within 7 days from the date of execution of this Terms of Settlement, and copies of the withdrawal requests along with the receipts issued by the Trade Marks Registry shall be provided to Kiply Industries Limited. In the event Veeramunthu and Mangalam Enterprises fail to do so, Kiply







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Industries Limited shall be at liberty to file this Terms of Settlement, along with copies of orders/ judgments/ decrees thereon at the Trade Marks Registry, seeking abandonment/ refusal of the said Trade Mark applications. Veeramuthu and Mangalam Enterprises also undertake and confirm that they shall never use the aforesaid filed trade mark applications. Veeramuthu and Mangalam Enterprises will carry out necessary follow ups at the Office of the Trade Marks Registry to have the said requests for withdrawal of the applications formally recorded in the official records of the Ld. Registrar of Trade Marks, such that the status of such applications in the official records of the Trade Marks Registry are changed to "Withdrawn" as soon as possible. Veeramuthu and Mangalam Enterprises also undertake to take any and all steps to ensure official withdrawal of the said application at their own cost, as soon as possible.

V.V. WR. Veeramuthu and Mangalam Enterprises undertake and confirm that will assign within 7 days of the date of execution of this Terms of Settlement, a deed of assignment in favour of Kirply Industries Limited for the following trade mark registration:

Application No.	Trade Mark
3782105	

The said assignment is owing to the fact that the said trade mark registration comprises of "Vista" over which Kirply Industries Limited enjoys earlier proprietary rights. Kirply Industries Limited agrees to pay Veeramuthu and Mangalam Enterprises, a sum of Rs. 10,000/- as reimbursement of expenses incurred in obtaining such registration.





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Veeramuthu and Mangalam Enterprises also undertakes and confirm that they shall never use the aforesaid trade mark. Veeramuthu and Mangalam Enterprises also undertake to take any and all steps to ensure official recordal of the assignment of the said trade mark registration, in favour of Kitply Industries Limited, at their own cost, at the Trade Marks Registry as and when required.

V I I Veeramuthu and Mangalam Enterprises undertake and confirm that they have withdrawn unconditionally their trade mark oppositions to the following trade mark applications of Kitply Industries Limited:

Application No.	Opposition No.
3798551	935914
3798549	937842
3883255	975771
3798552	1105251
3798553	1105252

Such withdrawal requests shall be filed at the Trade Marks Registry within 7 days from the date of execution of this Terms of Settlement, and copies of the withdrawal requests along with the receipts issued by the Trade Marks Registry shall be provided to Kitply Industries Limited. In the event Veeramuthu and Mangalam Enterprises fail to do so, Kitply Industries Limited shall be at liberty to file this Terms of Settlement, along with copies of orders/ judgments/ decrees thereon at the Trade Marks Registry, seeking abandonment/ rejection of the said Trade Mark oppositions. Veeramuthu and Mangalam Enterprises will carry out necessary follow ups at the Office of the Trade Marks Registry to have the said requests for withdrawal of the trade mark oppositions formally recorded in the official records of the Ld. Registrar of Trade Marks.



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Veeramuthu and Mangalam Enterprises also undertake to aid Kitply Industries Limited in securing the registration of its aforesaid trade marks, at their own cost, as soon as possible.

✓ 14. Veeramuthu and Mangalam Enterprises confirm that they have not filed and will not file, directly or indirectly, in the future any other trade mark / copyright applications or any applications which seek any rights in marks/ artworks comprising of the impugned marks and/ or any mark identical and/or deceptively similar to or comprising of the said trade marks of Kitply Industries Limited, or any parts / variants thereof, in any manner whatsoever. If any such application, exists, they shall be withdrawn within 7 days of the execution of this agreement, and intimated to Kitply Industries Limited.

✓ 15. Veeramuthu and Mangalam Enterprises also confirm that they have not filed any petition before any forum, challenging the rights of Kitply Industries Limited in connection with the said trade marks and copyright, nor will they do so in the future, directly or indirectly. If any such application, exists, they shall be withdrawn within 7 days of the execution of this agreement, and intimated to Kitply Industries Limited.

✓ 16. Veeramuthu and Mangalam Enterprises confirm that they have intimated all appropriate authorities/private bodies, including the GST authorities, BIS authorities, municipal corporation etc., if applicable, that they are no longer using the impugned marks, or any mark similar to the said trade marks of Kitply Industries Limited.

✓ 17. Veeramuthu and Mangalam Enterprises confirm that they have destroyed all material, including but not limited to machineries, printing machines, equipment, packets, plywood, stamps, stamping machines, dyes, blocks,



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moulds, foils, printing drums, packaging materials, business papers, packets, packaging, leaflets, labels, stickers, posters, sign boards, bags, printed material, brochures, boxes, advertising material, business cards, promotional material, stationery/sets, boards, invoices, virtual material, internet listings etc., bearing the impugned marks and/ or any mark identical and/or deceptively similar to, or comprising of Kitply Industry Limited's said trade marks and/ and/or any part/variants thereof, at their own cost.

5. In consideration of the above noted admissions, confirmations, undertakings and acknowledgements on the part of Veeramuthu and Mangalam Enterprises, Kitply Industries Limited hereby forgoes its claim of damages, costs and any and all other ancillary claims as against Veeramuthu and Mangalam Enterprises which are subject of OSA No. 162 of 2021.

6. Kitply Industries Limited also agrees to ~~drop~~/withdraws its claims against Veeramuthu in CC No 5054 of 2021 pending on the file of Hon'ble XI Metropolitan Magistrate, Saidapet, Chennai and consents for quashing of the said Complaint by the Hon'ble Madras High Court filed by Kitply Industries Limited.

7. By entering into this compromise, (A) Kitply Industries Limited and (B) Veeramuthu and Mangalam Enterprises, agree that they shall have no further claims or demands against each other, in connection with the subject matter of the suit and related disputes.

8. Veeramuthu and Mangalam Enterprises acknowledge that if they violate the terms of this agreement, directly or indirectly, or cause to do so, Kitply Industries Limited will be at liberty to initiate appropriate action, as available under Law and Veeramuthu and Mangalam Enterprises shall be liable to damages and costs to Kitply Industries Limited.



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In these circumstances it is it is humbly prayed by the Appellant (Kityfy Industries Limited) and the 1st and 3rd Respondents (Veeramuthu and Mangalam Enterprises) that this Hon'ble Court may be pleased to take this terms of Settlement on record and Dispose OSA No. 162 of 2021 as against 1st and 3rd Respondents in terms of the Compromise and pass such further or other orders as this Hon'ble Court may deem fit and just and thereby render justice and pass such further or other orders as this Hon'ble Court may deem fit and just and thereby render justice.

In these circumstances it is it is humbly prayed that this Hon'ble Court may be pleased to take this terms of Settlement on record and a may be pleased to quash CC No 5054 of 2021 pending on the file of Hon'ble XI Metropolitan Magistrate, Saidapet, Chennai as prayed for by the Petitioner (Veeramuthu) and pass such further or other orders as this Hon'ble Court may deem fit and just and thereby render justice.

Kiply Industries Limited

For KITPLY INDUSTRIES LTD



Authorized Summary

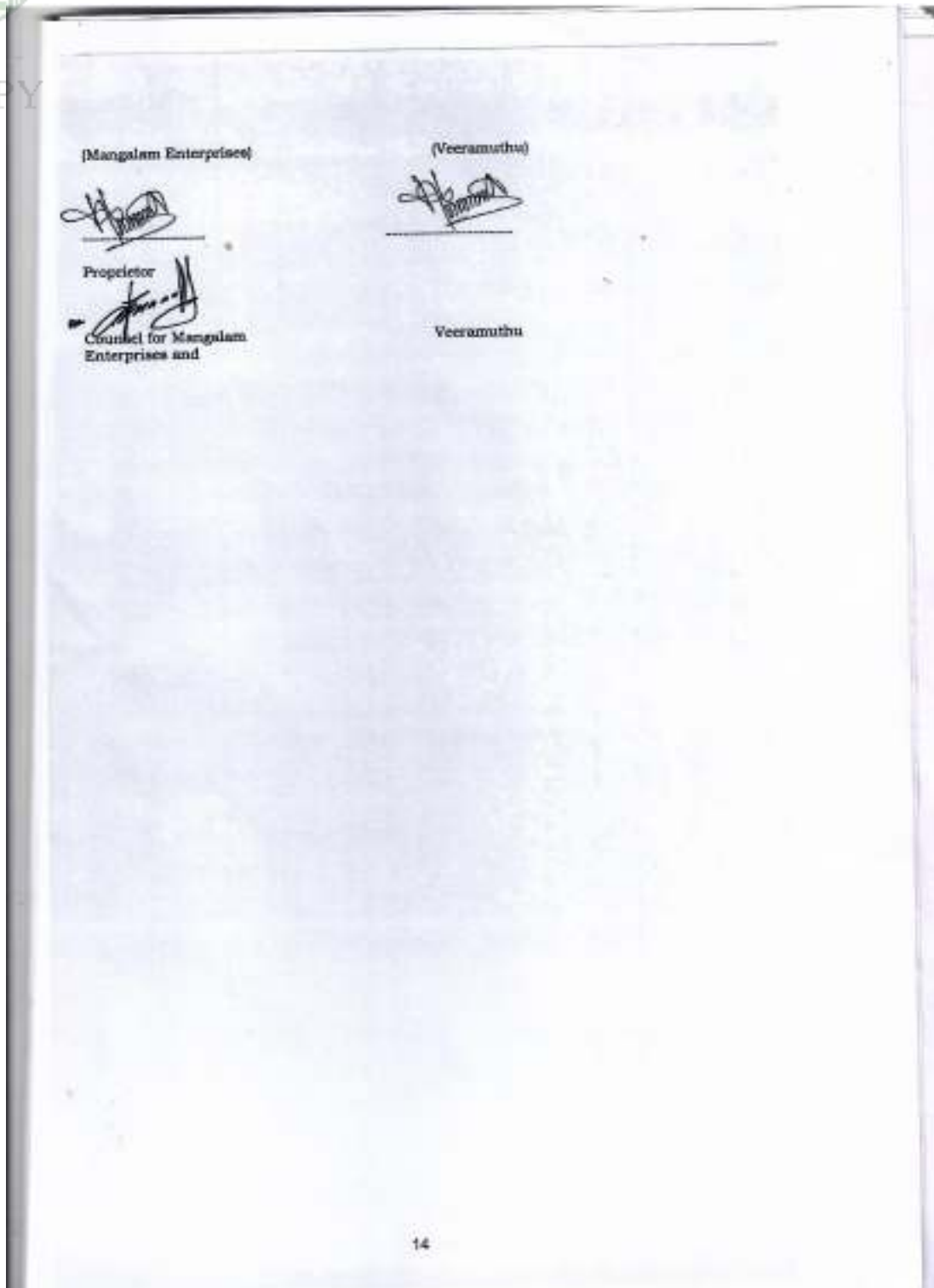
Authorized Signatory

S. 
 For
 P. ANIL KUMAR PRASAD
 Counsel for the Kityly Industries Limited



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The said ToS will now form part of the compromise decree. There shall be no order as to costs.

10. We also make it clear that rights, if any, of appellant/plaintiff to seek a declaration that its mark is a well-known trademark within the meaning of Section 2(1)(zg) of the TM Act by following the procedure and in accordance with the said TM Act are preserved, if such course is adopted on being so advised and if so desired, the authorities shall deal with the well-known trademark application on its own merits and in accordance with law, untrammelled by this compromise decree.

nv

(M.S.J.) (K.G.T.J.)
11.06.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order



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M. SUNDAR,J.

AND

K. GOVINDARAJAN THILAKAVADI,J.

nv

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